Public Participation and Integrated Planning in the Tasmanian Private Timber Reserve Process

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Public participation and integrated land-use planning are recognised as important components of environmental and natural resource management generally, and within the forestry industry, as an essential component to the achievement of Ecologically Sustainable Forest Management. Public participation and integrated planning are mutually inclusive. The role of humans in environmental degradation and repair implies that management of environmental problems is essentially the management of people. Thus, an integrated and effective approach to environmental planning and management that is both ecologically and temporally sustainable requires appropriate public participation in the planning process. This article reviews integrated land use planning and public participation in the context of the land use planning unit, the Private Timber Reserve, a key component in the development of the Tasmanian private forest industry.

Introduction

In the context of the historical conflict that has characterised the management of Australia's forests, the Commonwealth and State governments have sought, via various policies and inquiries, to establish a forest management framework that is both ecologically and socially sustainable. Examples include the Resource Assessment Commission Forest and Timber Inquiry (1990-1992),[1] the Ecologically Sustainable Development Working Group for Forest Management,[2] which formed part of the development of the *National Strategy for Ecologically Sustainable Development* 1992,[3] the *National Forest Policy Statement* 1992,[4] the Montreal Process for sustainable forest management of temperate and boreal forests (1994)[5]

[1] Resource Assessment Commission, *Forest and Timber Inquiry Final Report* (Australian Government Publishing Service, Canberra, 1992).

[2] Ecologically Sustainable Development Forest Use Working Group, *Final Report: Forest Use*, (Australian Government Publishing Service, Canberra, 1991).

[3] Commonwealth of Australia, *National Strategy for Ecologically Sustainable Development*, (Commonwealth of Australia, Canberra, 1992).

[4] Commonwealth of Australia, *National Forest Policy Statement* 1992, (2nd edition, Commonwealth of Australia, <http://www.rfa.gov.au/rfa/national/nfps>, 1995).

[5] The Montreal Process represents an international attempt to achieve sustainable forest management of temperate and boreal forests via a system of criteria and indicators. The seven criteria agreed to by the twelve member nations, including Australia, describe a broad range of forest values, including the maintenance of, inter alia: biological diversity, soil and water resources, socio-economic benefits and productive capacity.

and the Regional Forest Agreement Process (1997).[6] Significantly, these initiatives have led to the development of Ecologically Sustainable Forest Management (ESFM) as a guiding protocol for forest management in Australia.

Ecologically Sustainable Forest Management is defined as "managing forests to maintain their full range of benefits—environmental, economic and social".[7] Ecologically Sustainable Forest Management forms the vision of the NFPS,[8] expressed as eleven broad national goals for ESFM. The goals include maintaining a permanent forest estate, effective public participation in decision-making, the sustainable expansion of Australia's plantation base and managing forests for a variety of uses and values, including tourism, recreation and non-wood products.[9] Importantly, both the vision and goals of the *National Forest Policy Statement* recognise the importance of public participation to the achievement of ESFM, including in decision-making, and management that is responsive to the community. The *National Forest Policy Statement* also recommends a "holistic" approach to forest management, and an integrated and coordinated decision-making process.[10]

Private forestry, defined as the management of forests on privately owned land for commercial gain,[11] has been identified by Commonwealth and State governments[12] and forest management bodies[13] as a key area for industry expansion, particularly via increased plantation development. In Tasmania, private forestry occurs in the context of the Tasmanian forest practices system, a framework for self-regulation that applies to forest practices on public and private land, including environmental, operational and planning controls. In 1994, a statutory authority, Private Forests Tasmania, was established to facilitate and promote private forest development in Tasmania. The establishment of this authority indicates a government commitment to foster private forest development, and strengthened the existing private forestry framework, which included the land-use planning unit, the Private Timber Reserve. A Private Timber Reserve is registered on a land title and refers to land set aside solely for the purposes of growing and harvesting trees, and is subject to minimal external planning or management controls. The private forestry planning system in Tasmania is unique in Australia; no other State has a statutory body specifically responsible for facilitating and promoting private forest development.

The aims of this article are to examine planning processes that attend the management of private timber reserves in Tasmania, and to assess these processes in relation to two key areas, namely public participation and strategic, integrated environmental planning. We begin with a discussion about public participation and private property rights, the rights afforded to each often being incommensurable in the institutional frameworks by which environmental planning and management are conducted. We then turn to an elaboration of the Tasmanian private forestry framework and system; the framework for Private Timber Reserves; and the roles of public participation and of strategic and

Indicators (67 in total) provide a mechanism to define and measure change in criteria over time, including at different scales and are assessed for their regional applicability. The Montreal Implementation Group for Australia has developed a framework of regional indicators, which form the basis for assessing the sustainability of forest management within the RFA process. In November 1999, the Tasmanian Government released a consultation paper *Sustainability Indicators for the First Review in 2002* outlining the proposed indicators for Tasmania. For further information, see <http://www.affa.gov.au/forests> and <http://www.mpci.org>.

[6] The Regional Forest Agreement process aims to resolve ecological, economic and social issues associated with commercial forestry in Australia, within a long-term policy, planning and management framework. Thus, Regional Forest Agreements are based upon criteria for sustainable forest management, apply to defined forest regions, and remain in force for twenty years. For further information, see the various Regional Forest Agreements at the Regional Forest Agreement website, <http://www.rfa.gov.au/>.

[7] Department of Agriculture, Forestry and Fisheries, *What is Sustainable Forest Management?* (AFFA, 1999) http://www.affa.gov.au/docs/forestry/sustainability/crierias.html

[8] The *National Forest Policy Statement* remains the pre-eminent policy guiding forest management in Australia, outlining national goals for forest management and associated policy, planning and management objectives.

[9] *National Forest Policy Statement*, op cit n 4, p 4.

[10] *National Forest Policy Statement*, op cit n 4, pp 3 - 4.

[11] Australian Bureau of Statistics, *Tasmanian Yearbook 1998* (2nd edition, Commonwealth of Australia, 1997).

[12] The *Plantations 2020 Strategy*, a Commonwealth, State and industry initiative, aims to treble Australia's existing plantation area (as of 1997) from 1 million to 3 million hectares by 2020.

[13] For example, the larger industrial forest companies in Tasmania, including ANM, Boral and North Forest Products operate joint venture schemes, whereupon agreement is entered into with private landowners to develop land for commercial forest. Profits are shared according to input.

sustainable land management practices in private forestry. We close with some recommendations for change and speculations about the future of the PTR system in Tasmania.

Public participation and integrated planning

The importance of public participation is recognised in myriad international,[14] national[15] and local[16] environmental policies and legislation. As a key component of ecologically sustainable development and a decision-making framework that is widely supported, public participation is meant to attract minimal confrontation and is characterised by decision-making transparency.[17] Public participation means somewhat different things to different people,[18] but is usually defined in terms of its *characteristics*. Participation is also relative, and includes the limited opportunity to comment on draft policies, or the capacity to participate in the formulation and implementation of planning objectives, which is more meaningful.

Robinson[19] notes that the issue is not "participation, more participation and at all costs". Community participation must be effective. Determining what constitutes effective participation varies; however Simon's[20] view of a "permeable" decision-making process, that involves "getting inside and mixing it up, engaging with what is going on in the process while it is unfolding, not after it is over", incorporates the diverse elements of effective participation. These elements include access to information,[21] legal rights of standing and enforcement,[22] and participation in management, policy and planning.[23] In effect, participation is meaningful when it is sustained, deliberative, and directed to action and change.

Environmental planning refers to the identification of desirable objectives by the community, for the physical environment and the creation of procedures and programs necessary to achieve these aims.[24] Increasingly, the need to plan *across* and *above* property and political boundaries

[14] United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development* (The United Nations Conference on Environment and Development, Rio de Janeiro, 3 to 14 June 1992, <http://www.igc.apc.org/habitat/agenda21/rio-dec.html>), at Principle 10. United Nations Committee on Environment and Development, *Agenda 21* (UNCED, <http://www.igc.apc.org/habitat/agenda21/ch-08.html> 1992), at Chapters 8 and 23. Montreal Process Working Group, *Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests* (Montreal Process Working Group, 1998).

[15] For example, see *National Forest Policy Statement*, op cit n 4. *National Strategy for Ecologically Sustainable Development*, op cit n 3, at Chapter 32. Commonwealth of Australia, *National Strategy for the Conservation of Australia's Biological Diversity* (Commonwealth of Australia, <http://www.erin.gov.au/portfolio/esd/biodiv/strategy.html>, 1996), at Ch 5.

[16] For example, public participation is a sustainable development objective of the Tasmanian Resource Management and Planning System (see *Land Use Planning and Approvals Act* 1993, Sch 1, Pt 1). Public participation is also expressly recognised as necessary to the conservation of biodiversity in, for example, the New South Wales National Parks and Wildlife Service, *New South Wales Biodiversity Strategy* (NSW National Parks and Wildlife Service, Hurstville, 1999) and the Tasmanian Parks and Wildlife Service, *Draft Tasmanian Nature Conservation Strategy*, (1999): (<http://www.parks.tas.gov.au/manage/natcon/biodiv/ncsdraft>

[17] Resource Assessment Commission, op cit n 1.

[18] T A Steelman and W Ascher, "Public involvement methods in natural resource policy making: advantages, disadvantages and trade-offs" in (1997) 30 *Policy Sciences* 71-90.

[19] D Robinson, "Public participation in environmental decision-making" in (1993) *Environment and Planning Law Journal* (5) 320-340, at 323.

[20] A E Simon, "Valuing public participation" in (1998) 25(4) *Ecology Law Quarterly* 757-764, at 757.

[21] See S R Arnstein, "A ladder of citizen participation" in (1969) July *American Institute of Planners Journal* 216 – 224. M A Moote, M P McClaran, and D A Chickering, "Theory and practice: Applying participatory democracy theory to public land planning" in (1997) 21(6) *Environmental Management* 877-889. C S King, K M Feltey, and B O Susel, "The question of participation: Toward authentic public participation in public administration" in (1998) 58(4) *Public Administration Review* 317-325. G Hampton, "Environmental equity and public participation" in (1999) 32 *Policy Sciences* 163-174.

[22] Robinson, op cit n 19. For a State-by-State review of participatory avenues within planning statutes, see J Taberner, N Brunton and L Mather, "The development of public participation in environmental protection and planning law in Australia" in (1996) *Environmental and Planning Law Journal* 260.

[23] See Robinson, op cit n 19. D Grinlinton, "Natural resources law reform in New Zealand – Integrating law, policy and sustainability" in (1995) 2(1) *The Australasian Journal of Natural Resources Law and Policy* 1 – 37. JC Thomas, *Public Participation in Public Decisions* (Josey-Bass Publishers, San Francisco, 1995). Moote, McClaren and Chickering, op cit n 21. C S King, K M Feltey and B O Susel, op cit n 21. J McDonald, "Mechanisms for public participation in environmental policy development – lessons from Australia's First Consensus Conference" in (1999) 16(3) *Environmental and Planning Law Journal* 258.

[24] A Gilpin, *An Australian Dictionary of Environment and Planning* (Oxford University Press, Melbourne, 1990), p 73.

to incorporate ecological and environmental processes is recognised as essential to achieve sustainable environmental and social outcomes.[25] For example, the *National Strategy on the Conservation of Australia's Biological Diversity* recognises regional planning "in which environmental characteristics are a principal determinant of boundaries", as being of "major importance" to successful biodiversity conservation.[26]

An integrated planning approach combines ecological, social and economic considerations within a single framework, allowing the identification of varying stakeholder interests, and of activities likely to have an environmental impact, with management actions to mitigate or reduce these impacts. Planning strategies based on ecological as opposed to political boundaries include integrated catchment management, integrated local area planning and bioregional planning.

Rethinking private property ownership

The Australian public is interested in how and why we manage our forests. Given that debate has centered on the management of public forests by public forestry agencies, this desire for involvement is easily justified; what is being managed is a public resource ultimately owned by the community, and managed (on its behalf) by government forestry agencies. Private forestry, however, occurs on one of the legal and political cornerstones of Western society – private land. Historically, private land has been considered an "indisputable object for ownership and use".[27] External involvement in or regulation of land-use activities on private land[28] is vigorously resisted. Thus, "for centuries the law has allowed private landowners to shape their own environments".[29]

In terms of regulation, there appear to be two major approaches to the use and development of private land. First, via policy and legislation, governments have actively supported the entrenched common law framework of proprietary rights, including associated legal rights such as trespass and nuisance, which minimise external interference in and regulation of private property use. Second, in upholding this framework, governments have taken a passive approach to private property use by inadequately regulating or managing certain activities. In failing to regulate appropriately land-use activities, governments have condoned activities that have resulted in long-term ecological impacts at both site-specific and landscape levels; in Australia, the classic example is agriculture.[30]

Davidson[31] argues that private property has "failed to provide equality of access to and a fair distribution of the material resource base" or to "furnish desirable environmental outcomes". These social and ecological externalities challenge the justification for and adequacy of retaining an absolute or exclusive view of private property rights. In particular the legal view of private property rights as applying to a faceless other – the landowner – has resulted in little regard for the capability of the land and the appropriateness of the landowner's activities to the land.[32] Thus, there is a need to redefine the legal and social framework of private property and to remove the entrenched view of a landowner's proprietary rights as "sacrosanct". There is also a need for the creation of institutions

[25] D S Slocombe, "Environmental planning, ecosystem science and ecosystem approaches to integrating environment and development" in (1993) 17(3) *Environmental Management* 289-303. D Armitage, "An integrative methodological framework for sustainable environmental planning and management, (1997) 19(4) *Environmental Management* 469-479. New South Wales National Parks and Wildlife Service, op cit n 16.

[26] *National Strategy for the Conservation of Australia's Biological Diversity*, op cit n 15, at 1.2.

[27] R J Hobbs, and A J M Hopkins, "From frontier to fragments: European impact on Australia's vegetation" in (1990) 16 *Proceedings of the Ecological Society of Australia* 93-114 at 108.

[28] Modification of this traditional view is particularly problematic in the context of regulation that benefits the wider community, whilst simultaneously disadvantaging the landowner; for example, the requirement that a landowner modify or cease an activity that threatens the environment, despite suffering a loss of income as a result. In terms of forestry, this view appears to underpin the decision to make conservation of forests on private land voluntary under the RFA Private Forests Land Reserve Program.

[29] G M Bates, *Environmental Law in Australia* (3rd edition, Butterworths, Sydney, 1992), p 29.

[30] J Davidson and E Stratford, *The Social and Institutional Dimensions of Natural Resource Management – Building the Knowledge Base: Final Report* (Land and Water Resources Research and Development Corporation, Canberra, 2000).

[31] J Davidson, *In Search of the Ecologically Responsible Society: Sustainability as Ecopraxis* (Unpublished PhD Thesis, School of Geography and Environmental Studies, University of Tasmania, Hobart, 1999), p 159.

[32] ET Freyfogle, "The particulars of owning" in (1998) 25(4) *Ecology Law Quarterly* 574-589.

for natural resource management that are flexible, robust and resilient, and that integrate the efforts not just of government departments whose brief is environmental management but of mainline departments such as Trade, Finance and Treasury.[33]

In a legal context, the redefinition of private property rights removes the right of the individual to use land in largely unfettered ways, and replaces such practice with a legal paradigm sensitive to the ecological capacities of the land. In a social context, such redefinition highlights two trends. First, it demonstrates a movement – ecologically forced and socially motivated – back to community and the commons, to considerations beyond the individual (manifest in the individual as landowner) to the wider ecological environment of the community.[34] Second, the suggested redefinition builds on conceptions of place and encourages people to "pay more attention to the particulars of home",[35] reflecting the relationship between an ecologically sustainable society and an intimate acquaintance with the land. Thus, a reformed property law has the potential to promote a sense of place, including commitments to the long-term sustainability of the land for present and future generations.

The Tasmanian private forestry system

Approximately thirty per cent of Tasmania's forests[36] and 28 per cent of its native forests are privately owned.[37] The contribution of private forests to Tasmania's total timber supply is significant, accounting for an estimated 50 per cent of total hardwood pulpwood supplies,[38] and 54 per cent of new plantation establishment.[39]

Traditionally, the commercial management of private forests has been informal with, for example, one-off clearance for agricultural purposes, without regard to reforestation.[40] Until the introduction of the *Forest Practices Act* in 1985, this informal management approach was legislatively supported by a general lack of environmental regulation or control applying to either the public or private forest industries. In terms of the private forest industry, the need for environmental regulation was partly driven by the experiences of the 1970s, which saw large areas of private forest cleared to meet the resource demands of the growing export woodchip industry. Low financial returns to landowners inhibited reforestation or conversion to productive agricultural land, leading to a gradual deterioration of the private forest resource.

The declining area and condition of private forests led to a formal inquiry into the regulation of commercial forestry on private land – the Board of Inquiry into Private Forestry Development. The Board made various recommendations related to improvement of the regulatory and environmental management framework for private forestry, including the establishment of a body within the Forestry Commission to oversee commercial private forestry and the development of forest practices legislation.[41] Limited funds and lack of political will stalled the implementation of some of the Board's recommendations,[42] including a forest practices Act. However, in 1978 the Private Forestry Council was established within the Forestry Commission to "actively foster the interests of private forestry in Tasmania".[43]

In 1985, in response to social and political pressure,[44] the State government passed the *Forest Practices Act*. The Act introduced a regulatory framework for sustainable forest management, which included a system of Forest Practices Plans and an associated Forest Practices Code, resulting in the mandatory application of minimum

[33] See J Davidson and E Stratford, op cit n 30.
[34] See Freyfogle, op cit n 32.
[35] Ibid, p 11.
[36] Forestry Tasmania, *State of the Forests Report*, (Forestry Tasmania, Hobart, 1998), p 9.
[37] Ibid, p 5.
[38] Australian Bureau of Statistics, op cit n 11, p 5.
[39] Forestry Tasmania, op cit n 36, p 5.
[40] LT Carron, *A History of Forestry in Australia*, (Australian National University Press, Canberra, 1985).
[41] M G Everett and S W Gentle, *Report of the Board of Inquiry into Private Forest Development in Tasmania* (Parliamentary Paper No 25, Government Printer, Hobart, 1977).
[42] J Dargavel, "Governments and the environment: Managing Tasmania's forest sector" in DC Rich and GJR Linge, *The State and Spatial Management of Industrial Change*, (Routledge, London, 1991), p 128.
[43] Forestry Commission of Tasmania, *Private Forestry in Tasmania 1978-1988: Achievements of the Decade* (Forestry Commission, Hobart, 1988).
[44] This pressure included the proposed extension of Tasmanian export woodchip licenses in 1983, with the perceived inadequacy of the industry's Environmental Impact Statement focusing national and international attention on Tasmania's forests. In addition, the government-sanctioned logging of the Lemonthyme and Southern Forests led to widespread community debate and a subsequent Commission of Inquiry.

environmental standards to timber harvesting on public and private land. The introduction of Private Timber Reserves (PTRs) under the same Act,[45] and the creation in 1994 of a statutory authority, Private Forests Tasmania,[46] to facilitate private forest development, further contributed to the development of a formal, private forest industry.

The Tasmanian forest practices system

Commercial timber harvesting on private land is regulated within the Tasmanian forest practices system, a self-regulating and self-funding system with the objective to achieve the "sustainable management of Crown and private forests with due care for the environment".[47] The major components of the forest practice system, including guiding objectives relating to sustainable forest management, independent bodies to oversee the administration and implementation of the Act, the hearing of appeals and processes for planning and management, are contained in the *Forest Practices Act* 1985.

The *Forest Practices Code*[48] (the Code) prescribes the planning, environmental and operational controls applying to timber harvesting on public and private land and represents the only example of the mandatory application of a forest practices code to public *and* private land, in Australia. The Code identifies specific environmental values—geomorphology, flora and fauna, threatened species, cultural heritage, soil and water, and visual landscape—and management prescriptions to protect these values during harvesting. The Code was first introduced in 1987, with a review of Code provisions and the subsequent issue of a new Code in 1993. A third review is currently underway, involving a two-month public consultation process, with a new Code likely to be issued by the end of 2000.[49]

In addition, a number of reviews of specific provisions within the Code have been undertaken,[50] notably the independent review into the soil and water management provisions of the Code.[51] This review examined the adequacy of Code provisions relating to soil and water management, including issues such as streamside reserves, road construction and use of chemicals. The Final Report, released in April 1999, recommended various amendments to individual provisions, but also questioned the overall effectiveness of the Code in protecting soil and water values during timber harvesting. Thus, the Report identified as a "high priority" the need for an "integrated assessment and research effort"[52] to establish whether specific Code provisions achieve acceptable environmental outcomes.[53]

Under the *Forest Practices Act*, virtually all timber harvesting operations on public and private land must be carried out under an approved Forest Practices Plan,[54] based on the provisions of the *Forest Practices Code*. A Forest Practices Plan outlines planning and management prescriptions for individual harvesting operations including for example, the method of harvesting, the location and width of streamside reserves, and prescriptions for reforestation. Forest Practices Plans are prepared by Forest Practices Officers,[55] persons trained and accredited by the Forest Practices Board to ensure compliance with provisions of the *Forest Practices*

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[45] *Forest Practices Act* 1985, Pt II.

[46] *Private Forests Act* 1994, s 4.

[47] *Forest Practices Act* 1985, Sch 7.

[48] Forestry Commission, *Forest Practices Code* (Forestry Commission, Hobart, January 1993).

[49] See Forest Practices Board, *Draft Forest Practices Code* 2000, (<http://www.fpb.tas.gov.au/fpb/pdf_files/revised_code>, 2000).

[50] For example, the Review of the Steep Country Provisions (1997) and the Review of the Workplace Safety and the Code (1998).

[51] Review Panel into the Soil and Water Provisions of the *Forest Practices Code* (hereafter Review Panel), *Forest Practices Code: Review of Soil and Water Provisions. Final Report to the Forest Practices Advisory Council* (Forest Practices Board: <http://www.fpb.tas.gov.au/fpb/pdf_files/review_water&soil_provisions>, 1999).

[52] Ibid, p 10.

[53] See also Environmental Defenders Office (TAS), *Submission to the Forest Practices Code: Review of Soil and Water Provisions by the Forest Practices Board - Review Panel Report* (Environmental Defenders Office, Hobart: <http://www.tased.edu.au/tasonline/edo/submissions/forest.htm>, 1998).

[54] A Forest Practices Plan is *not* required on land that is not classified as vulnerable, for the exclusive harvesting of firewood not using certain types of machinery (identified as C1–C5 under the *Forest Practices Code*) or if the total volume harvested is below 100 tonnes (*Forest Practices Regulations* 1997, s 5).

[55] As at June 1999, 168 Forest Practices Officers were employed, derived from the following sources: Forestry Tasmania, 70; Forest Practices Board, 4; Private Forests Tasmania, 9; Companies/Consultants, 85. Source: Forest Practices Board, *Annual Report 1998-1999* (Forest Practices Board, Hobart, 1999), p 26.

Act and the Code.

The forest practices system is based on the principle of self-regulation, however monitoring and assessment of management, planning and policy processes is conducted by an independent body, the Forest Practices Board. The Forest Practices Board is the most important administrative body within the forest practices system, with responsibility to oversee the forest practices system, including *inter alia*, developing forest policy, hearing public complaints brought under the *Forest Practices Act*, and assessing applications for PTRs.[56] Importantly, the Board is responsible for monitoring and enforcing environmental standards under the *Forest Practices Code* by, for example, receiving and investigating complaints in relation to forestry activities and conducting annual audits of Forest Practices Plans. The Board is composed of persons with expertise in private and public forestry, environmental management and local government.[57]

The Private Timber Reserve framework

There are currently over 1100 PTRs declared, accounting for 28 percent of Tasmania's private forest area.[58] A PTR provides a landowner with a legal status and protection for growing and harvesting trees such that, once declared, a PTR is generally only subject to planning and environmental controls imposed under the *Forest Practices Act*.[59] The rationale behind the establishment of a specific land use planning unit dedicated to forestry is to ensure a coordinated and strategic approach to commercial forestry on private land.[60] In particular, the exemption of private forestry activities on a PTR from the local government development assessment process is intended to enhance commercial certainty by avoiding variable development assessment by individual local governments.[61] The ability of local government to provide sufficient resources to adequately assess timber harvesting, including professional expertise, is also questioned.[62]

An application to declare a PTR must be advertised in a daily newspaper,[63] with a 28-day period within which public objections may be lodged with the Forest Practices Board.[64] Rights to object to the declaration of a PTR are limited to: a neighbour within 100 metres of the proposed PTR boundary who is "directly and materially disadvantaged"; a local government; a State authority; or a person with a legal or equitable interest in the land.[65] A PTR will be refused[66] if:

(a) the application has not been made in good faith and honestly;
(b) the land is not suitable for declaration as a private timber reserve;
(c) a person who has a legal or equitable interest in the land, or in timber on the land, would be disadvantaged if the application was granted;
(d) by virtue of the operation of any Act, the owner of the land is prohibited from establishing forests, or growing or harvesting timber, on the land;
(e) it would not be in the public interest to grant the application; or
(f) a neighbour within 100 metres of the proposed PTR would be "directly and materially disadvantaged".

Suitability (see subs (b) above) is not defined in the *Forest Practices Act*, however a PTR will be rejected if it cannot meet the provisions of the Forest Practices Code, or it is not forest, that is, it is cleared land. However, on cleared land, the existence of a joint venture agreement is sufficient proof of an intention to establish forest and an application for a PTR will be considered.

The Private Forests Act 1994

The *Private Forests Act* 1994 establishes the statutory authority, Private Forests Tasmania, responsible to promote and facilitate the development of private forestry in Tasmania. Its

[56] *Forest Practices Act* 1985, s 4C.
[57] *Forest Practices Act* 1985, s 4A.
[58] Forest Practices Board, op cit n 55, p 10.
[59] Commercial forestry is also subject to a number of Acts and Policies outside the system, including the *Threatened Species Protection Act* 1995, the *Aboriginal Relics Act* 1970, the *Historic Cultural Heritage Act* 1995. It has also been suggested in the review of the *Forest Practices Code* that the *State Policy on Water Quality Management* 1997 apply to forestry operations (see Forest Practices Board, op cit n 40, p 66).
[60] Forest Practices Board, op cit n 55, p 15.
[61] Wilkinson, Graeme, Chief Forest Practices Officer, Tasmanian Forest Practices Board, personal communication.
[62] Ibid.
[63] *Forest Practices Act* 1985, s 6(1).
[64] Ibid, s 6(2).
[65] Ibid, s 7(4).
[66] Ibid, s 8(2).

functions include to advise the Minister on private forestry matters; maintain an inventory of private forests; and provide coordinated input on behalf of private growers in respect to land-use issues.[67] Private Forests Tasmania is unique in Australia as a statutory authority specifically responsible for the promotion of commercial private forestry, and indicates a government commitment to development of this industry. Concomitant with its functions, Private Forests Tasmania plays a significant role in promoting the establishment of PTRs and assisting landowners in preparing applications for a PTR.

Public participation in the Private Timber Reserve process

Natural resource management fails "when public confidence in those systems is eroded or when those systems do not meet changing public expectations".[68] In particular, accountability of decision-makers to the wider community is critical within a self-regulated system, and the procedures of a regulatory agency should "enable it to demonstrate transparency of decision making".[69] Thus, the decisions and procedures of the Forest Practices Board should be "fair and open" and "based on established principles and supported by documented reasons".[70] The following section examines public involvement and participation in the forest practices system and the PTR process.

Environmental monitoring: the role of the Forest Practices Board

At a strategic level, the public has the opportunity to participate in the development of environmental standards for forestry operations via an opportunity to comment on, object to or request amendments to the *Forest Practices Code*, under Pt 4 of the *Forest Practices Act*. The Forest Practices Board is responsible for assessing both objections and proposed amendments to the Code within broadly defined parameters under the *Forest Practices Act*. Thus, the Board need only "consider" any objections received, before issuing the relevant amendments.[71] Comprehensive reasons are not given as to why a particular Code provision is or is not modified, included or rejected in the final Code.

The processes for the receipt and examination of public complaints against forest practices are similarly subjective. There is minimal provision or guidance in the *Forest Practices Act* as to the manner in which public complaints against forest practices should be addressed or the way in which breaches of a Forest Practices Plan or the *Forest Practices Code* should be considered. As a result, the Board has wide discretion in determining the severity of a public complaint, and there is no statutory provision outlining the types of breaches considered serious, moderate or minor. This is in contrast to the approach taken under Tasmania's major environmental legislation, the *Environmental Management and Pollution Control Act* 1994 (*EMPCA*), which outlines levels of environmental harm and associated enforcement actions.[72]

Thus, the Board retains discretion to determine the severity of a complaint and the appropriate course of action, with s 47B of the *Forest Practices Act* allowing the Board to impose a fine in lieu of prosecution. Table 4.3 indicates the way in which individual complaints were viewed and addressed by the Forest Practices Board in the period 1998-1999. No detailed explanation is given by the Board as to the type of action or breach that results in a category A, B, C, D or E listing; for example, what is a "marginal breach", what type of action leads to the issuing of a warning? In addition, there is no indication of the effectiveness of the action taken in either repairing and/or preventing environmental damage; that is, it is unclear whether the system contributes to sustainable forest management.

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[67] *Private Forests Act* 1994, s 6.

[68] Department of Natural Resources, *Assessment of Systems and Processes for Ecologically Sustainable Forest Management in South-East Queensland. Final Report* (Department of Natural Resources, Brisbane, 1999), p 4.

[69] A Gardner, "The administrative framework of land and water management in Australia", 16(3) *Environment and Planning Law Journal* 212 at 217.

[70] Ibid, p 217.

[71] *Forest Practices Act* 1985, s 33(3).

[72] EMPCA divides environmental harm into three categories – serious or material environmental harm (s 5), and environmental nuisance (s 3), with criteria provided for each category.

Table 4.3: Nature of complaints lodged with Forest Practices Board, June 1998 - June 1999.

	A	B	C	D	E
State Forest	14	5	5	6	1
Company operations on private property	5	2	4	5	1
Independent private property operations	2	0	7	13	4
TOTAL	21	7	16	24	6

A – No breaches of Act or Code
B – Marginal breaches, no serious environmental damage
C – Warnings given
D – Notices issued under Act or make good requested
E – Alleged offences subject to legal investigation or legal action

The lack of statutory or administrative detail regarding the assessment of public complaints and breaches of the *Forest Practices Code*, are highlighted in a recent breach of the *Forest Practices Code* by Forestry Tasmania in the Taranna State Forest.[73] Contractors employed by Forestry Tasmania logged within 16 metres of a stream requiring a 30 metres buffer zone under the Code, leading to serious soil erosion and turbidity in nearby Canoe Bay, part of the newly declared Tasman National Park. The continuation of operations in wet weather conditions exacerbated the environmental impacts of the logging. Local residents complained to the relevant government Minister regarding the breach, however, Forestry Tasmania eventually reported the matter to the Board after implementing remedial action. Wilkinson[74] considers that Forestry Tasmania's actions in reporting the breach to the Board demonstrates that "self-regulation ... worked even though there had been a slip-up". The Board considered the breach serious, and imposed a $5,000 fine. In contrast, Graham[75] notes the influence of the vociferous local community in forcing Forestry Tasmania to admit the breach, and questions the preventive effect of the relatively insignificant penalty. In addition, the mitigating factor that, as a result of the breach, Forestry Tasmania implemented new procedures to prevent a recurrence of the problem, raises questions as to why these procedures had not been in place prior to the breach.[76]

Audits of Forest Practices Plans

The Board is responsible to coordinate an annual audit of Forest Practices Plans, constituting a random sample of 15 per cent of all Forest Practices Plans prepared on public and private land each year. The audit process assesses the degree to which forest operations reflect statutory requirements,[77] in

[73] The Taranna State Reserve is located on the Tasman Peninsula, approximately 90 kilometres south-east of Hobart.
[74] Graeme Wilkinson, Chief Forest Practices Officer, Forest Practices Board, Hobart, personal communication, February 2000.
[75] A Graham, "Forest practices – the inefficacious in pursuit of the ineffaceable" in (2000) 269 *The Tasmanian Conservationist* 12-13.
[76] Ibid.
[77] This process is a statutory requirement under the *Forest*

particular the provisions of the *Forest Practices Code*. Results for most land tenures in most assessed areas achieved over 90 percent compliance for the period ending 1999.[78] However, the results show environmental standards on private land for those operations conducted by independent operators to be consistently below those achieved on public land, particularly in the areas of road construction and streamside protection.[79]

The Review Panel into the Soil and Water Provisions of the *Forest Practices Code* identified two major deficiencies in the audit process.[80] Firstly, auditing of Forest Practices Plans occurs after the completion of harvesting, and does not assess compliance *during* forestry operations. Secondly, the audit process assesses compliance with the *Forest Practices Code* via the relevant Forest Practices Plan and not the degree to which the *Forest Practices Code* is "actually providing sustainable forest management with demonstrable environmental outcomes".[81] To this end, the Review Panel recommended the implementation of ongoing and routine inspections of operations during harvesting, and further research and monitoring to assess the degree to which the Code achieves adequate environmental outcomes.[82] The recent requirement[83] that Forest Practices Plans be "signed off" on completion of harvesting, indicating whether or not the Plan has been complied with, represents an important first step in monitoring environmental standards during forestry operations.

Public consultation

Given the integral role of local government in land use planning and environmental management in Tasmania, primarily via planning schemes,[84] it is important that consultation with individual local governments with respect to private timber harvesting is both timely and effective. Under the *Forest Practices Code*, consultation with local government is required in the following cases: in areas zoned for landscape protection under planning schemes; where operations may affect a listed town water supply catchment; and in the event of the construction of a new or major upgrade of, an existing road access.[85] In addition, under the *Communication of Information in Relation to Forest Practices Operations*,[86] an internal policy developed by the Forest Practices Board, a Forest Practices Plan will not be certified unless both local government and all landowners within 100 metres of the boundary of the proposed operations are notified a minimum of 30 days prior to the commencement of harvesting. The provisions of this Policy have been included in the *Draft Forest Practices Code* 2000.[87]

The *Forest Practices Act* and *Forest Practices Code* do not specify the type of information that must be conveyed to local government and neighbouring landowners, simply referring to the need to provide relevant information in a Forest Practices Plan to interested parties in a "timely and efficient manner".[88] In reality, a *Notice of Intent to Conduct Forest Practices* is forwarded to the relevant local government with details as to site location and the appropriate contact person. There is no responsibility to provide a Forest Practices Plan to local government or adjoining landowners, or to consult on issues beyond those listed above (that is, landscape, listed town water supply and road upgrade). Thus, consultation as it currently exists in the PTR process essentially equates to *notification*, with no real opportunity for local government or neighbouring landowners to have meaningful input into the planning process. This lack of consultation affects the ability of local government to undertake integrated environmental or land management, or to address adequately a range of potential community concerns, as council staff are not always informed in any detail about the nature of proposed harvesting operations. For neighbouring landowners, the impacts are direct and immediate, with no opportunity of redress.

Practices Act 1985, s 4E(b).

78 Forest Practices Board, op cit n 55, p 21.

79 Ibid, p 21.

80 Review Panel, op cit n 51, pp 13-15.

81 Ibid, p 15.

82 Ibid, pp 13-15.

83 *Forest Practices Act* 1985, s 25A amended by *Forest Practices Amendment Act* 1999 (No 23 of 1999).

84 *Land Use Planning and Approvals Act* 1993, s 29.

85 *Forest Practices Code*, op cit n 48, p 8.

86 Forest Practices Board, *Conservation of Values Under the Forest Practices System* (Policy Statement by the Forest Practices Board, Hobart, October, 1999).

87 Forest Practices Board, op cit n 49, p 66.

88 Ibid, p 11.

Third-party appeals

The range of people able to object to the declaration of a PTR is limited to a neighbour within 100 metres of the proposed PTR boundary who is "directly and materially disadvantaged"; a local government; a State authority; or a person with a legal or equitable interest in the land.[89] In addition, there is no right of third-party appeal against management contrary to a Forest Practices Plan; however an applicant may appeal against any conditions of approval imposed by the Forest Practices Board within a Forest Practices Plan, or the refusal of the Board to certify a Forest Practices Plan.[90]

Neighbouring landowners are potentially most affected by timber harvesting operations. These impacts are particularly significant when timber harvesting and replanting is incompatible with neighbouring land uses, for example, organic farming. In such cases, where there is economic loss to a landowner as a result of operations on a PTR, an appeal is possible under the *Forest Practices Act*. However, the right of appeal is based on two restrictive legal provisions. First, a landowner must be located within 100 metres of the proposed PTR *boundary*, not the property boundary. Thus, the boundary of a PTR can be readily be located an adequate distance from a common boundary so as to preclude appeal. Given the fluidity of ecosystems, particularly air and water, and the nature of timber harvesting activities (for example, spray drift and siltation of waterways), arguments that this distance represents an adequate ecological barrier are questionable.

Second, a neighbour must prove "direct and material disadvantage",[91] which is not defined in the *Forest Practices Act* but implies economic loss as a direct result of timber harvesting operations. Considering there is no requirement that timber harvesting or plantation establishment occur at the time a PTR is declared, and thus, for an approved Forest Practices Plan to be in existence, this appeal provision is onerous. The absence of a Forest Practices Plan makes a determination as to the actual impacts of timber harvesting difficult, and thus, for a neighbouring landowner to prove "direct and material disadvantage". An adjacent landowner can only object in light of what *may* happen, for management prescriptions and operational practices that may cause direct and material loss have not yet been determined. Thus, one local government planner noted that "the worst part [of the PTR process] is the removal of the public participation process, in that affected people have no say".[92]

Local government may appeal the declaration of a PTR on a number of specified grounds,[93] the two most relevant of which is the unsuitability of land for a PTR, and that the declaration would not be in the "public interest". In 1997, the Meander Valley Council appealed to the Forest Practices Tribunal[94] against the declaration of a PTR within its municipality. The appeal was based on the potential for land use conflicts between forestry activities on the PTR and neighbouring residential uses.[95] The Tribunal approved the PTR and the council applied to the Supreme Court for reversal of the Tribunal's decision.

The Supreme Court appeal was successful. Section 8 (2)(d) of the *Forest Practices Act* required the Tribunal to refuse an application if, by virtue of the operation of any other Act, a landowner was prohibited from undertaking forestry activities. Forestry was prohibited on the subject land under the Meander Valley planning scheme, and therefore the Tribunal "had no jurisdiction to declare the land in question a private timber reserve because at the time that declaration was made the use of the land for that purpose was prohibited by law".[96] The appeal had the effect – albeit briefly – of requiring PTRs to be assessed by local government under the provisions of the *Land Use Planning and Approvals Act* 1993 (LUPAA) and raised doubt as to the legality of existing PTRs. However, shortly after the successful appeal both the *Forest Practices Act* and

[89] *Forest Practices Act* 1985 s 7.
[90] Ibid, s 25.
[91] Ibid, s 8(2)(f).

[92] This comment was received in the context of a confidential survey of local government planners in Tasmania, conducted by Gee (1999), that examined the relationship between local government and private forestry in the land use planning process.
[93] *Forest Practices Act* 1985, s 8(2)(a) – (e).
[94] *Meander Valley Council* v *Forest Practices Board* [1997] TASFPB (18 August 1997).
[95] At the time of appeal, the land in question was zoned Residential Low Density under the *Meander Valley s 46 Planning Scheme* 1995, within which forestry was a prohibited use.
[96] Crawford J quoted in *Meander Valley Council v Forest Practices Board* [1998] TASFPB (26 June 1998) at 2.

LUPAA were amended[97] to clarify the legal exemption of PTRs from the local government planning approval process, and to retrospectively validate existing PTRs.

Both the Meander Valley[98] and Break O'Day[99] councils have also appealed against the declaration of a PTR based on an interpretation of the "public interest" as including the removal of land within a PTR from council control, and the subsequent inability of council to control activities on such land. In both cases the Tribunal rejected the grounds of the appeal, considering that the intent of the *Forest Practices Act* is to retain control of PTRs under this Act and not to entail direct control by council. The specific exemption of forestry activities from LUPAA added further weight to this interpretation.[100] The Tribunal considered that an interpretation of "public interest" must be based on other factors, including reduced visual amenity, and the use of chemicals or water quality.[101] However, it considered that the appropriate time to address such issues was in the development of a Forest Practices Plan; it is only when specific quantifiable evidence is presented indicating that timber harvesting is unlikely to be able to be satisfactorily conducted in the future, that a PTR may be rejected.[102]

The Tribunal's view that the appropriate time to consider the *specific* impacts of harvesting is within the development of a Forest Practices Plans, and not within the declaration of a PTR, represents a significant impediment to local government. The Forest Practices Plan process contains limited opportunity for local government consultation (restricted to three areas under the *Forest Practices Code*), and no opportunity of appeal against a Plan should issues subsequently arise. Given that council representation of the community is based on its ability to manage municipal land, the failure of the Tribunal to recognise the relationship between the public interest and municipal land management on the one hand, and private forestry on the other, is significant.

Strategic land management

A strategic and integrated planning approach recognises the importance of ecological boundaries in the planning framework and the incorporation of all stakeholders in the management process. For example, the *Draft Tasmanian Nature Conservation Strategy*[103] recognises the need to "integrate planning and management of natural diversity at the local and regional level, *including across boundaries*" (emphasis added) to protect biodiversity. An integrated approach to forest management can be defined as having characteristics such as compliance with regional conservation policies and goals; an integrated planning process that avoids fragmentation; and provision for public involvement at all levels.[104] In addition, the *National Forest Policy Statement* establishes the principle that clearance of private native forests should be permitted only to the extent that it complies with regional conservation and catchment management objectives.

The focus for the assessment of environmental values during forest operations, including biodiversity, is at the level of the forestry coupe or PTR, with inadequate reference to the surrounding landscape or catchment area.[105] Management is based on prescriptions contained in the *Forest Practices Code*; in various planning tools produced by the Research and Advisory Program of the Forest Practices Board,[106] including management manuals; and via obligations under other legislation. In particular, management manuals are key tools in interpreting and applying Code provisions, including threatened flora and fauna, landscape, archaeological, geomorphological, soil and water values, and associated management actions. For example, the *Threatened Fauna Manual for*

[97] *Forest Practices Amendment (Private Timber Reserves) Act* 1998 (No. 48 of 1998).
[98] *Meander Valley Council v Forest Practices Board* [1997] TASFPB (7 May 1997).
[99] *Break O'Day Council v Forest Practices Board; B and S Leatham* [1997] TASFPB (11 June 1997).
[100] *Land Use Planning and Approvals Act* 1994, s 20(7)(a).
[101] *Break O'Day Council* v *Forest Practices Board; B and S Leatham* [1997] TASFPB (11 June 1997), pp 2-3.
[102] *Meander Valley Council* v *Forest Practices Board* [1997] TASFPB (7 May 1997).
[103] Tasmanian Parks and Wildlife Service, op cit n 16, p 5.
[104] *National Strategy for Ecologically Sustainable Development*, op cit n 3.
[105] Review Panel, op cit n 51, see pp 18 and 27.
[106] The Research and Advisory Program of the Forest Practices Board provides expert technical and scientific advice and management prescriptions for the protection of environmental values and conducts research into forest management issues. The Program is composed of persons with expertise in a variety of areas, including botany, cultural heritage, landscape planning and geomorphology.

Production Forests[107] lists known localities of threatened fauna for each 1:25000 map sheet, and provides information on the biology and distribution of species. Specialists within the Research and Advisory Program provide further management advice to Forest Practices Officers and, in specific cases, management actions are set in consultation with the Department of Primary Industries Water and Environment (DPIWE). Some management actions are also determined by other legislation, including the *Threatened Species Protection Act* 1995 and the *Aboriginal Relics Act* 1975.

The most notable example of an integrated approach to the protection of environmental values on PTRs is the *Conservation of Values Under the Forest Practices System*,[108] implemented by the Forest Practices Board. This Policy refers to the "fundamental contribution of a land holder to sustainable forest management"[109] and applies to the reservation of up to five percent of the proposed harvest area for the protection of environmental values. Soil and water values are specifically identified as being part of a landowner's general duty of care, with the conservation of significant botanical values "up to a reasonable threshold" also identified.[110] Areas of land reserved above this threshold limit give a landowner a right to claim compensation. The final threshold may be varied if the conservation of a significant value can be achieved with some constraints, for example selective logging in lieu of clearfelling.[111]

Two changes to the forestry system may also result in a more integrated planning approach. The first is the recommended incorporation[112] of the *State Policy on Water Quality Management*[113] into the *Forest Practices Code*. The Policy identifies Protected Environmental Values for all water bodies in Tasmania, which must be taken into account by local government in the development assessment process. Similarly, Forest Practices Plans will need to address the protection and maintenance of these values. Given that the effectiveness of streamside reserves in protecting water quality has been questioned[114] this Policy will make an important contribution to the protection of water quality values.

The second change that may lead to more integrated management of forestry and other activities derives from DPIWE's initiation of a system of *public authority management agreements* and *landowner management agreements* aimed at conserving biodiversity. The former represent agreements between or among public authorities and DPIWE, the latter between landowners and DPIWE. The approach is relatively new, with only one public authority management agreement between Forestry Tasmania and DPIWE, applying to the Simpsons stag beetle, drafted and not yet certified.[115] However, these agreements will at least achieve an integrated approach to the conservation of individual species at a landscape level, importantly allowing a more detailed assessment of the degree to which the species is conserved across the State. Landowner agreements will be voluntary with a mixture of methods, including education, used to encourage landowners to enter into an agreement, and manage land accordingly.

Implications for sustainable land management

A primary rationale supporting the PTR as a land use planning unit is its integrative approach to private forest management, allowing the uniform application of environmental and land use planning controls to all private forestry operations.[116] However, the PTR framework constitutes an integrated approach to resource management in the paradigm of traditional natural resource management in its concentration on a specific resource – private forests – on a specific area of land – the declared PTR. Thus, the PTR framework

[107] J Jackson and R Taylor, *Threatened Fauna Manual for Production Forests in Tasmania*, (2nd edition, Forest Practices Board, Hobart, 1998).

[108] Forest Practices Board, *Conservation of Values Under the Forest Practices System*, (Policy statement of the Forest Practices Board, Hobart, October 1997).

[109] Ibid, p 1.

[110] Ibid, p 2.

[111] Ibid.

[112] Forest Practices Board, op cit n 49, p 10.

[113] Review Panel, op cit n 12, p 18.

[114] Review Panel into the Soil and Water Provisions of the *Forest Practices Code*, *Summary of Comments Received and Response of Review Panel* (Forest Practices Board, <http://www.fpb.tas.gov.au/fpb/pdf_files/review_water&soil_provisions_summary>, 1999), p 3.

[115] S Munks, Senior Zoologist, Research and Advisory Programme, Forest Practices Board, Tasmania, personal communication, May 2000.

[116] Forest Practices Board, op cit n 55, p 15.

represents an integrated approach to the *private forest resource* as a distinct entity and not to integrated *land* management. The implications of this approach are ecological, social and economic, reflecting the range of social and institutional impediments to sustainability in natural resource management that were noted earlier in sections on public participation and private property rights.

Given the high proportion of unreserved, poorly reserved and threatened elements of forest biodiversity located on private land,[117] and uncertainty about the long-term ecological impacts of timber harvesting, an integrated approach to private forest management is essential. Such an approach is more likely than an ad hoc, piecemeal planning approach to account for gaps in scientific knowledge and provide the best possible opportunity to conserve species that are poorly understood, poorly protected, or unknown. In terms of the Tasmanian forest industry, an integrated approach is essential where heavy reliance is placed on the effectiveness of the *Forest Practices Code* and Forest Practices Officers in achieving acceptable environmental outcomes. However, achieving an integrated planning focus in the absence of regional or local environmental strategies, including strategies that display some uniformity in content is difficult. There is no legislative framework for the creation of regional conservation strategies within either the Resource Management and Planning System (RMPS)[118] or the Tasmanian forest practices system. In addition, the argument that some local governments do not have adequate resources or expertise, to undertake the ecological assessment of a PTR, contains some substance.[119]

In addition to ecological impacts, the PTR process can also have a significant *social* impact. These impacts are related to the direct effects of timber harvesting – for example, reduced visual amenity and decreased water quality – and to the removal of PTRs from the local government planning process, including importantly, limited rights of objection to or appeal against, proposed PTRs. In this context, in the Huon Valley, a municipality with strong historical involvement in both public and (increasingly) private forest industries, both council and community have questioned the adequacy of existing planning processes for forestry in general and PTRs in particular.[120] Specifically, council asserts that "the same public scrutiny should apply to forestry as applies to all other land uses or developments" including the need to attain an "acceptable level of public accountability".[121] The impacts of limited community involvement are compounded by perceived deficiencies in the PTR planning system itself, including that the PTR process is possibly less "responsive to changing community expectations [than local government] planning scheme controls" (Hayes, 2000). The deficiencies are highlighted when compared with the local government planning process under the RMPS, specifically its wide participatory avenues, including generous rights of third-party objection and appeal against proposed development.[122]

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[117] J B Kirkpatrick, "Nature conservation and the Regional Forest Agreement process" in (1998) 5 *Australian Journal of Environmental Management* 31-37.

[118] The Resource Management and Planning System (RMPS) was introduced in 1993 as a framework for the sustainable development of Tasmania. It is predicated on five principles of ecologically sustainable development (intergenerational equity, conservation of biodiversity, precautionary approach, social equity, efficiency and community participation). The System is advanced via several acts of Parliament, including the *Land Use Planning and Approvals Act*, the *Resource Management and Planning Appeal Tribunal Act*, *State Policies and Projects Act*, *Environmental Management and Pollution Control Act*, *Historic Cultural Heritage Act*, *Resource Planning and Development Commission Act*, *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act*, and the *Approvals (Deadlines) Act*. The common objectives of the System, enshrined in Sch 1 of LUPAA, include the promotion of sustainable development, the provision for the equitable, orderly and sustainable use of resources, the facilitation of public participation, the facilitation of economic development in accordance with other objectives, and shared responsibility among government, industry and community for resource management and planning.

[119] E Stratford and J Davidson, *Various interviews with Council officers from Tasmanian local governments* (Research in progress, Small Australian Research Grant).

[120] Huon Valley Council, *Background Paper in Regard to Private Forestry*, (Unpublished paper, Huon Valley Council, Tasmania, June, 1998). See also J Kelman and E Lazarus, "Community and forestry in the Huon Valley" in E Stratford (2001), *Sustainability and Community in Geeveston and Cygnet, Tasmania's Huon Valley* (Occasional Paper No 3, Sustainable Communities Research Group, University of Tasmania, Hobart).

[121] Huon Valley Council, op cit n 121, p 3.

[122] Generous civil enforcement provisions characterise legislation within the RMPS, allowing members of the public to bring actions against a variety of legislative breaches: see for example, the *Land Use Planning and Approvals Act* 1993 s 64,

From a social perspective, the lack of integrated planning, underpinned by community perceptions that private forestry should not be exempt from the local government planning process, is highlighted in the current debate over plantation establishment on cleared agricultural land. This debate is concentrated in the northwest of Tasmania where large areas of cleared agricultural land have been purchased, frequently by large industrial companies for plantation establishment. In response, a meeting of the Burnie City Council, a municipality located in the north-west, voted 12-0 in support of making plantations a discretionary development under the planning scheme, requiring planning approval and allowing public comment on individual proposals. The adjacent Circular Head Council, moved at a council meeting to propose an amendment to the *Forest Practices Code* requiring that all plantations be assessed in terms of their impact, including inter alia, on adjacent land, control of fauna and vermin, land valuations, and weed infestation. Where impacts are identified, the proposal should be modified or managed to ameliorate local concerns.[123] Thus, in the context of strong social debate regarding plantation forestry on cleared agricultural land, one farmer noted the ease with which timber harvesting is approved "whereas we have to get all sorts of permits and approvals just to build a shed".[124]

Local government control

We argue that more acceptable and sustainable environmental and social outcomes would be achieved via *control* of the PTR planning process within the local government planning process. "Control" would entail lodgment of PTR applications with relevant local governments, whose staff would then refer environmental assessments to the Research and Advisory Program of the Forest Practices Board and the Nature Conservation Branch of DPIWE. The recommendations of these bodies would then be incorporated into the final planning permit, which should take a similar format to the existing Forest Practices Plan. A similar assessment system applies to "Level 2" activities under Tasmania's peak environmental legislation, EMPCA. Under this Act, the environmental assessment of a Level 2 activity, as listed in Sch 2, is referred to the Environmental Management and Pollution Control Board with subsequent conditions included in the final planning permit. Forest Practices Officers should retain their role in preparing Forest Practices Plans for the relevant landowner/company, with final Plans forming part of the development application submitted to local government. In terms of its assessment, local government should continue to use the *Forest Practices Code* as a *basis* for its planning and management prescriptions.

The advantages of assessment control by local government include better opportunities to integrate local environmental strategies in the private forestry framework; consideration of the wider ecological and social impacts of timber harvesting, including on adjoining properties and water bodies; and involvement of the community in decision-making, including third-party appeal rights. Importantly, local government control would allow local governments the opportunity to identify and assess issues associated with a proposed PTR, and address these issues at the outset. Such an opportunity is in contrast to the existing situation where PTRs are commonly approved without a Forest Practices Plan, social and ecological issues are not comprehensively addressed, and are left to the Forest Practices Plan process within which local government has virtually no involvement.

In terms of biodiversity, assessment at local government level would allow the identification of significant environmental values at a localised scale including, for example, locally significant vegetation communities and species. Once identified, these areas may be prioritised by relevant local governments in terms of protection, with values that are sufficiently protected or ecologically degraded identified as potential areas for timber harvesting. In an ecological context, such an approach is advantageous in terms of conserving genetic variability within species and populations.

Recommendations for change

In this article we have argued that the PTR planning process as it currently exists is deficient in two key areas – public participation and integrated environmental planning. While the seriousness of

Environmental Management and Pollution Control Act 1994, s 48 and the *Water Management Act* 1999, Div 3.

[123] A Graham, op cit n 76.

[124] Anon, "Wake up call on forestry plantations" in (2000) *The Circular Head Chronicle* Wednesday, April 5.

these deficiencies support the removal of the PTR as a land use planning unit in Tasmania, in reality removal is not likely to be a politically feasible option. As a planning unit with the specific objective of promoting private forestry and minimizing external interference, the PTR has gained widespread industry and governmental support. In this context, the following recommendations for change to the *existing* process are suggested:

An Integrated Catchment Management Strategy developed under the *State Policies and Projects Act* 1997 must be developed and implemented for Tasmania.[125] This Policy should provide objectives and guidelines regarding catchment management, as well as mechanisms for management across political and property boundaries, and it should recognise the role of the community in catchment planning and management. Such a policy would furnish vital links among human activities, environmental management and planning, and ecologically sustainable development. Importantly, to be effective, the Policy must apply to *all* resource management activities in Tasmania, including those currently exempt from the RMPS.[126]

Assessment of the suitability of land for a PTR should involve direct and formal consultation with local government in every instance; consultation should not be confined to those matters currently contained in the *Forest Practices Code*. This consultation should be explicit and include the automatic forwarding of a copy of the PTR cover sheet (or Forest Practices Plan where developed) to the relevant local governments, and a standard referral form for the recording of specific issues or concerns raised by local government. This process will afford a formal opportunity for local government to raise concerns with a PTR, and to identify regional and local environmental strategies directly related to the PTR assessment. Subsequent management and operational prescriptions contained in the Forest Practices Plan should directly address objectives and management prescriptions contained in these strategies.

The existing restrictions relating to third-party appeal rights, including the basis for appeal against the declaration of a PTR must be broadened. In relation to neighbouring landowners the qualification that a landowner must be located within 100 metres of the PTR boundary, and prove "direct and material disadvantage" must be removed. In particular, the 100 metres distance restriction appears arbitrary, effectively rendering this appeal right worthless.

A general right of appeal against management contrary to a Forest Practices Plan is warranted. It is essential that forest management be accountable to the community for its actions – on private and public land. In the case of a PTR when a Plan may not necessarily be in place at the time of approval, this right allows the community to assess the adequacy of the Plan. This right should include *all* Forest Practices Plans, regardless of land tenure.

The process for receiving and addressing complaints against forest practices must be transparent and explicit. This process should include the classification of breaches based on seriousness, associated penalties, and the basis of any discretion to waive penalties. These provisions should be contained in the *Forest Practices Act*.

The future

This article has examined public participation, private property rights and processes involved in the management of PTRs in Tasmania, arguing that existing arrangements are inadequate to the task of integrated land-use planning, a central element of sustainable development. We began with a discussion on the relationships among public participation, private property rights and environmental degradation, and argue that public involvement in private property management is warranted. Importantly, this involvement should include the right to enforce environmental standards, as expressed within legislation, against landowners whose activities threaten the environment and the long-term general interest –

[125] The application of State Policies to forestry activities is potentially restricted by s 13B(3) of the *State Policies and Projects Act* 1997. This section states that a statutory authority is *not* required to undertake activities, perform functions or exercise powers that are inconsistent with its statutory functions or powers, in relation to obligations under a State Policy. However, it is argued that the functions of the Forest Practices Board, which include to maintain the *Forest Practices Code*, oversee the standards for Forest Practices Plans, and advance sustainable forest management, is consistent with the adoption of a such a Policy. In addition, the provisions of State Policies have until now been sufficiently broad as to ensure consistency with most management activities.

[126] These activities are public and private forestry, mineral exploration, water-based marine farming activities and most use and development conducted by the Parks and Wildlife Service.

two of the central foci of ESD. In relation to the private forest industry, these rights should be expressed by broadening the basis for third-party objections against PTRs, particularly for neighbouring landowners, and by allowing appeals against management contrary to a Forest Practices Plan.

The benefits in allowing these rights outweigh the costs, and include improving the transparency of the private forestry planning process, including the accountability of decision-makers and therefore public confidence, and greater scrutiny of the scientific and environmental management processes of the forestry system. The limitations on public participation within the PTR framework, including restricted third-party appeal rights and limited consultation with affected parties, appear inimical to a transparent, equitable and publicly supported planning framework. In terms of land use planning, the focus on the private timber resource and private property rights – as opposed to wider ecological associations and long-term general interests – precludes a truly integrated and effective planning process. Thus, there appears to be no justification for why private forestry should be treated differently from any other land use or development and remain exempt from the local government planning approvals process.